4048.

SUPREME COURT OF THE UNITED STATES.

No. 166.

THE NASHVILLE MARINE, FIRE INSURANCE AND LIFE AND TRUST COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM T. RICE.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MARYLAND.

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GIDEON, Print.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States, for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore on the first Monday in April, in the year of our Lord one thousand eight hundred and fifty-two:

Present the honorable John Glenn, judge of Maryland district; Z. Collins Lee, esq., attorney; Thos. H. Kent, (of Jos.,) esq., marshal; Thomas Spicer, clerk.

Among other were the following proceedings, to wit:

WILLIAM T. RICE
vs.
THE NASHVILLE MARINE, Fire Insurance and Life and Trust Company.

Be it remembered, that heretofore, to wit, on the twenty-seventh day of September, in the year of our Lord one thousand eight hundred and fifty, the said William T. Rice, by John Nelson and David Stewart, his attorneys, with the consent of the said Nashville Marine, Fire Insurance and Life and Trust Company, by Charles F. Mayer, its attorney, as on said declaration appears, declared against the said Nashville Marine, Fire Insurance, and Life and Trust Company, in a plea of covenant, in the words and of the tenor following, to wit:

Declaration.

Circuit court of the United States, in and for the district of Maryland.

DISTRICT OF MARYLAND, *sct.*

The Nashville Marine, Fire Insurance, and Life and Trust Company, of Nashville, in the State of Tennessee, incorporated by the Legislature of the said State, and whose stockholders are citizens thereof, was summoned to answer William T. Rice, a citizen of the State of Maryland, in a plea that they keep with him, the said William T. Rice, the covenants made between the said Rice and the said Nashville Marine, Fire Insurance and Life and Trust Company, according to the force, form, and effect of a certain policy of insurance made between them, &c.

And whereupon the said William T. Rice, by David Stewart, his attorney, says, that the said William T. Rice was, on the twenty-seventh day of March, 1850, owner of the brig Adelaide, then lying in the harbor of Baltimore, and that the said Nashville Marine, Fire Insurance and Life and Trust Company, on the day and year aforesaid, at the city aforesaid, made their certain deed or policy of insurance,

sealed with the common seal of the said company, which the said William T. Rice brings here into court, the date whereof is the same day and year aforesaid, on the said brig Adelaide, for a voyage from the city of Baltimore, in the State of Maryland, to the city of Charleston, in the State of South Carolina, and back to the said city of Baltimore, as her port of discharge, and thereby covenanted and agreed to insure for the said plaintiff the sum of eight thousand dollars upon the said brig for the said voyage, against the perils of the seas and other perils in the said policy mentioned; and the said plaintiff says, that the said brig did, on the thirteenth day of April, in the year aforesaid, sail from the port of Baltimore aforesaid, on the voyage described in the said policy, and while proceeding thereon was, by the perils of the seas, wrecked and totally lost, of which the said Insurance Company, on the twenty-fourth day of April, in the year 1850, had notice, and were bound to pay the same within ninety days after proof of loss and interest in said assured; yet that the said company has never paid the said sum of eight thousand dollars, nor any part thereof; whereby the said William T. Rice says that he has damage and is the worse to the value of ten thousand dollars; and thereupon he brings suit.

D. & J. STEWART,
J. NELSON,
Plaintiff's attorneys.

Which said declaration is thus endorsed, to wit:

Mr. SPICER:
File this nar. and docket a suit by consent as of April term, 1850.

J. NELSON,
D. STEWART,
For plaintiff.

CHARLES F. MAYER,
For defendant.

And thereupon, at November term of the said court, to wit, the first Monday in November, in the year of our Lord one thousand eight hundred and fifty, come into the circuit court here the parties aforesaid, by their attorneys aforesaid; thereupon further process of and upon the premises aforesaid between the parties aforesaid, by order of the court here thereon, is continued until the first Monday in April next.

At which said first Monday in April, in the year of our Lord one thousand eight hundred and fifty-one, come again into the circuit court here the parties aforesaid, by their attorneys aforesaid.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by order of the court here thereon, is further continued until the first Monday in November next.

At which said first Monday in November, in the year of our Lord one thousand eight hundred and fifty-one, come again into the circuit court here the parties aforesaid, by their attorneys aforesaid.

Thereupon further process of and upon the premises aforesaid between the parties aforesaid, by order of the court here thereon, is further continued until the first Monday in April next.

At which said first Monday in April, in the year of our Lord one thousand eight hundred and fifty-two, come again into the circuit court here the parties aforesaid, by their attorneys aforesaid.

Plea.

And the said Nashville Marine, Fire Insurance and Life and Trust Company, by Charles F. Mayer, their attorney, come and defend the wrong and injury, when, &c., and say that they have not broken their covenant with the said William T. Rice, in manner and form as the said William T. Rice hath above thereof complained against them; and of this the said Nashville Marine, Fire Insurance and Life and Trust Company put themselves upon the country, with leave, &c.

And the said William T. Rice doth the like, &c.

Therefore let a jury thereon appear before the court here immediately, by whom, &c., and who neither, &c., to recognise, &c., because as well, &c.: Whereupon for trying the issue aforesaid, it is ordered by the court here that twenty persons from the pannel of petit jurors returned to the court here by the marshal of the Maryland district be drawn by ballot. And thereupon the twenty persons being so drawn by ballot and written upon two lists, one of which said lists is delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out four persons from the said lists, the remaining twelve persons being called, come, to wit:

Jury.—John R. Magruder, James W. Collins, William O. Welch, Charles Jessop, Archibald Hart, John Perdue, William Webster, Isaac Owens, (of Jas.,) Caleb Littig, Joshua H. Shipley, William B. Brooks, and George W. Duvall.

Verdict.

Who being empanneled and sworn to say the truth in the premises, upon their oath do say: The said Nashville Marine, Fire Insurance and Life and Trust Company have not observed, performed, fulfilled, or kept any of the covenants, grants, articles, clauses, contracts, conditions, and agreements in the within written policy of insurance contained and specified, on the part of the said Nashville Marine, Fire Insurance and Life and Trust Company to be observed, performed, fulfilled, and kept according to the form and effect of the said policy of insurance within written, as the said William T. Rice within complains against them; and they assess the damages of the said William T. Rice, by reason of the breaches of the covenants aforesaid, to the sum of seven thousand five hundred and ninety-three dollars and five cents ($7,593 05) current money.

Judgment.

Therefore it is considered by the court here that the said William T.

Rice recover against the said Nashville Marine, Fire Insurance and Life and Trust Company, as well the said sum of seven thousand five hundred and ninety-three dollars and five cents (7,593 05) current money, by the jurors aforesaid in form aforesaid assessed, for his damages which he hath sustained by reason of the breaches of the covenants aforesaid, as the sum of sixty-nine dollars and seventy-eight cents ($69 78) by the court here adjudged unto the said William T. Rice for his costs and charges by him about his suit in this behalf laid out and expended; and the said Nashville Marine, Fire Insurance and Life and Trust Company, in mercy, &c.

Memorandum.—Judgment rendered this 13th day of April, 1852, for the damages laid in the declaration and costs of suit. The said damages to be released on pay of the sum of $7,593 05, with interest thereon from the 13th of April, 1852, till paid, and costs of suit.

And now here at this day, to wit, the first day of December, in the year of our Lord one thousand eight hundred and fifty-three, the said Nashville Marine, Fire Insurance and Life and Trust Company produced to the circuit court here the writ of the United States of America, for the correcting of errors of and upon the premises, commanding that the record and proceedings aforesaid, of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December, (instant,) which said writ of error is in the words and of the tenor following, to wit:

THE UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the judges of the circuit court of the United States, for the fourth circuit, in and for the Maryland district, greeting:

[SEAL.] Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court, before you or some of you, between William T. Rice, plaintiff, and the Nashville Marine, Fire Insurance and Life and Trust Company, defendant, a manifest error hath happened to the great damage of the said Nashville Marine, Fire Insurance and Life and Trust Company, as by its complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December instant, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable R. B. Taney, chief justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and fifty-two.

Issued 1st December, 1853.

THO. SPICER, *Clerk circuit court.*

In pursuance whereof, and according to the form and effect of the act of Congress in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things relating to the same, together with the said writ of error, are hereby transmitted to the said Supreme Court accordingly.

The United States of America to William T. Rice, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at the City of Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fourth circuit, in and for the Maryland district, wherein the Nashville Marine, Fire Insurance and Life and Trust Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Nashville Marine, Fire Insurance and Life and Trust Company should not be corrected, and why speedy justice should not be done to the parties in this behalf. Witness my hand and seal this first day of December, in the year of our Lord one thousand eight hundred and fifty-three.

R. B. TANEY, [SEAL.]

I acknowledge notice of the above citation.

JNO. NELSON, [illegible] *for Rice.*

Writ of error bond.

Know all men by these presents, that we, Clinton Levering and Franklin Sullivan, of the city of Baltimore, are held and firmly bound unto William T. Rice in the just and full sum of fifteen thousand dollars, lawful money, to be paid to the said William T. Rice, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made and done, we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this thirtieth day of November, in the year of our Lord one thousand eight hundred and fifty-three.

Whereas, at a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in April, in the year of our Lord one thousand eight hundred and fifty-two, the said William T. Rice by the judgment of the same court recovered against the Nashville Marine, Fire Insurance and Life and Trust Company the sum of seven thousand five hundred and ninety-three dollars and five cents, lawful money of the United States, for his damages, as also his costs and charges by him

about his suit in that behalf laid out and expended. And whereas the said Nashville Marine, Fire Insurance and Life and Trust Company hath sued out the writ of the United States of America for the correcting of errors, and a citation directed to the said William T. Rice, citing and admonishing him to be and appear at a Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next, to show cause, if any there be, why the judgment aforesaid so as aforesaid rendered, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf. Now the condition of the aforegoing obligation is such, that if the said Nashville Marine, Fire Insurance and Life and Trust Company shall well and truly prosecute with effect its said writ of error, and pay unto the said William T. Rice, his heirs, executors, administrators, or assigns, the amount of the damages, costs and charges aforesaid adjudged unto him by the said circuit court, and also all such damages, costs and charges, as may be awarded to him by the said Supreme Court, in case the said Nashville Marine, Fire Insurance and Life and Trust Company shall fail to make good its said plea, then the above obligation to be void and of none effect, otherwise to be and remain in full force and virtue in law.

C. LEVERING, [SEAL.]
FRANKLIN SULLIVAN, [SEAL.]

Signed, sealed and delivered in presence of—
A. J. LEVERING.

Approved: R. B. TANEY.
Nov. 30th, 1853.

In testimony that the aforegoing is a true copy taken from the record and proceedings of the circuit court aforesaid:

I hereunto subscribe my name and affix the seal of the said circuit court, this twenty-second day of December, in the year of our Lord one thousand eight hundred and fifty-three.
[SEAL.]

THOS. SPICER,
Clk. circuit court.